

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6921

Amendment No. 1 to Interconnection Agreement)
between Verizon New England, Inc. d/b/a Verizon)
Vermont, and MCImetro Access Transmission)
Services LLC.

Order entered: 4/21/2004

ORDER APPROVING AMENDMENT No. 1 TO INTERCONNECTION AGREEMENT

I. BACKGROUND

On January 23, 2004, MCImetro Access Transmission Services LLC ("MCI") and Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"), requested that, pursuant to Section 252(e) of the Telecommunications Act of 1996 (the "Act"), the Public Service Board ("Board") approve Amendment No. 1 to an Interconnection Agreement ("Amendment") between them.¹

The Amendment results from a settlement agreement between MCI and Verizon that was approved by the Bankruptcy Court on July 29, 2003.² In significant part, the Amendment implements a three-year rate regime between MCI and Verizon for local traffic, including Virtual NXX, Unbundled Network Element - Platform ("UNE-P"), and Internet Service Provider- ("ISP") bound traffic;" it requires that MCI establish at least one mutual Point of Interconnection ("POI") on Verizon's network in each area in which MCI assigns its customers telephone numbers; and it provides that Voice Over Internet Protocol ("VOIP") will be defined as "Telecommunications Services," and therefore subject to certain reciprocal compensation or switched access charges.

¹ The original Interconnection Agreement between Verizon and MCImetro was approved on February 5, 2003, in Docket No. 6782.

² *In re WorldCom, Inc.*, Chapter 11 Case No. 02-13533(AJG), Motion for Entry of an Order Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure Seeking Approval of a Settlement Agreement with Verizon Communications, Inc. (Bankr.S.D.N.Y. filed 12/19/2003).

The Board's review of interconnection agreements is governed by the federal law that authorizes such agreements. Under Subsection 252(a) of the Act, any interconnection agreement negotiated under Section 252(a) must be submitted to the State commission for review under Section 252(e).³ The State commission has the authority to "approve or reject the agreement, with written findings as to any deficiencies." The Board may not reject the proposed interconnection agreement in whole or in part unless it finds that the agreement or any material portion thereof discriminates against a non-party carrier or is inconsistent with the public interest. The Board may also establish and enforce other requirements of State law in its review of the agreement under Section 252(e)(3). The Board must act to approve or reject the amendment within 90 days of its submission, or the amendment is deemed approved.⁴ The 90-day review period mandated by that section for this Amendment ends on April 22, 2004.

Section 252(a)(1) allows parties to negotiate agreements without regard to the standards set forth in the obligations and implementation subsections of Section 251.⁵

Section 252(i) of the Act provides that any interconnection, service, or network element approved under this Agreement shall be made available to any other requesting telecommunications carrier, and upon the same terms and conditions approved therein.

On January 27, 2004, the Board solicited a recommendation from the Vermont Department of Public Service ("Department"). The Department, by letter April 15, 2004, recommended that the Board approve the Amendment in whole, finding that the amended Interconnection Agreement did not violate Section 252 of the Act and that the Amendment did not contain terms that will harm Vermont consumers or competitors.

On February 6, 2004, Level(3) Communications, LLC ("Level(3)") filed comments. Level(3) does not suggest that the Amendment should be rejected. Rather, Level(3) requests that if the Board approves the Amendment, it should make clear that such approval is limited to the unique circumstances of the negotiated settlement between MCI and Verizon, and does not establish a precedent for any other telecommunications carriers. Level(3) asserts that certain

³ Under the Act, the Board is the "State Commission" in Vermont. 47 U.S.C.A. § 3(41).

⁴ 47 U.S.C. § 252(e)(4).

⁵ 47 U.S.C. § 252(a)(1).

terms of the Amendment are inconsistent with the requirements of federal law, in that it may allow MCI to collect a higher rate of compensation than other carriers under Federal Communications Commission ("FCC") rules for delivery of dial-up internet traffic, and might allow MCI or Verizon to collect switched access charges for VOIP traffic, which is not clearly subject to those charges under FCC rules.⁶

In response, on March 3, 2004, Verizon and MCI submitted reply comments. Verizon maintains that Level(3)'s argument regarding the Amendment's precedential value is unripe, speculative, does not present judicial controversy, and should only be considered in future proceedings, if any, that directly address Level(3)'s arguments. MCI asserts that the Amendment is a negotiated agreement, consistent with Section 252, and should be approved because it does not discriminate against other carriers and is in the public interest. Moreover, MCI argues that other carriers are free to exercise their rights under Section 252(i) to avail themselves of the same terms and conditions of the Amendment. Both Verizon and MCI assert that the appropriateness of the Amendment is not at issue, and that approval of a voluntarily negotiated interconnection agreement need not require compliance with the Act or FCC rules.

II. DISCUSSION

The Amendment is the result of arms-length negotiations between two telecommunications carriers. The Board's focus, as the Act provides, is therefore limited to the issues set forth in Section 252(e)(2)(A): whether the Interconnection Agreement, as amended, (or portions thereof) discriminates against a telecommunications carrier not a party to the Amendment, and whether the amended Interconnection Agreement is consistent with the public interest, convenience, and necessity. As the Board concluded previously, in making its determination, the Board must focus upon the potential effect of the Amendment on the evolution of competition in this state and whether the amended Interconnection Agreement raises the risk of harm to consumers (and thus is not consistent with the public interest).⁷

⁶ Level(3) points out that the classification of VOIP is currently pending before the FCC.

⁷Docket 5905, Order of 11/4/96 at 12.

The competition enabled by this and other interconnection agreements will likely benefit Vermont consumers and is consistent with the State's telecommunications goals as set out in 30 V.S.A. § 202c and the Telecommunications Plan adopted under Section 202d. At the same time, the Interconnection Agreement, as amended, does not contain terms that will harm consumers or competitors. It thus promotes the public interest.

The Amendment also does not discriminate against telecommunications carriers who are not a party to it. Pursuant to 47 U.S.C. § 252(i), other companies seeking to interconnect may adopt the same terms and conditions.

Our approval of the Amendment is limited to the parties who reached this agreement – Verizon and MCI – and any carrier who may adopt the same terms and conditions as allowed in Section 252(i). Our approval also does not serve as a precedent in any subsequent proceeding involving parties not subject to this particular Interconnection Agreement, nor does it necessarily represent judgements that the Board would make if it were required to arbitrate these issues. A carrier may choose to adopt the same terms and conditions as MCI does here pursuant to Section 252(i). Alternatively, the carrier may negotiate an agreement on new terms and conditions, or, if unable to reach such agreement, the parties may bring such a dispute to the Board pursuant to Section 252(b) of the Act. Such an arbitration would be decided on its own merits, without reliance on the terms and conditions approved herein.

Finally, our approval of the Amendment applies only to those terms and conditions set out therein. To the extent parties negotiate modifications or clarifications to the Amendment, they are not subsumed in our approval of the current Amendment. To the extent the changes are material, the parties will need to seek additional approvals from the Board.

III. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Pursuant to Section 252(e)(1) of the Telecommunications Act of 1996, Amendment No. 1 to the Interconnection Agreement between Verizon New England Inc., d/b/a Verizon Vermont, and MCImetro Access Transmission Services, LLC, is hereby approved.

2. Verizon and MCI shall be bound to comply with any lawful requirement imposed by the Board in Docket 5713, Docket 5903, any docket or rule established with respect to E-911 service, and any other docket or rulemaking proceeding governing the obligations of telecommunications carriers in Vermont.

3. Verizon and MCI shall notify the Board and Department of any modifications to the Interconnection Agreement, as amended, or the establishment of any terms and conditions that the Interconnection Agreement as filed leaves to further negotiations. If necessary, Verizon and MCI shall seek Board approval for the new or changed terms and conditions.

Dated at Montpelier, Vermont, this 21st day of April, 2004.

<u>s/Michael H. Dworkin</u>)	PUBLIC SERVICE
)	
)	BOARD
<u>s/David C. Coen</u>)	
)	OF VERMONT
)	
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 21, 2004

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.